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SELANGOR STATE GOVERNMENT & ANOR v. KUALA LUMPUR KEPONG BHD

COURT OF APPEAL, PUTRAJAYA
TENGKU MAIMUN TUAN MAT JCA
ABDUL RAHMAN SEBLI JCA
B KAMARDIN HASHIM JCA
[CIVIL APPEAL NO: B-01(A)-193-05-2016]
6 APRIL 2017

C ***LAND LAW:*** *Land acquisition – Acquisition by State Authority – Whether for public purpose – Whether acquisition contravened designated zoning of land – Whether purpose of acquisition contravened requirements under Environmental Quality Act 1974 – Whether Land Acquisition Act 1960 requires compliance with other laws before land could be acquired – Whether State Authority could have leased land instead of acquiring it – Land Acquisition Act 1960, s. 57*

D The respondent ('the applicant') was the registered proprietor of the land ('the scheduled land') held under the agricultural title but zoned partly as infrastructure and utilities and partly as agricultural. Pursuant to the 'Rancangan Tempatan Majlis Daerah Kuala Selangor 2025', part of the scheduled land and the applicant's adjoining land would be zoned for E industrial land use. In 2006, part of the scheduled land and the applicant's adjoining land were compulsorily acquired for purposes of constructing a sanitary landfill. Offer for compensations were made and accepted by the applicant. *Vide* a gazette notification dated 3 March 2015 and published on 12 March 2015 under s. 8 of the Land Acquisition Act 1960 ('LAA 1960'), F the State Authority decided under s. 3(1)(a) of the LAA 1960 to acquire the applicant's land for public purpose, in particular to expand the landfill. The applicant objected to the acquisition and filed an application for judicial review, *inter alia*, on the grounds that (i) the State Authority's failure to issue Form A violated the statutory requirement of s. 4 of the LAA 1960; (ii) the G purpose for which the scheduled land was acquired contravened the designated zoning of the scheduled land; (iii) the purpose of the acquisition contravened the requirements under the Environmental Quality Act 1974 ('EQA 1974'); and (iv) that the decision to acquire the land for the purposes of a landfill for a period of 10-15 years was irrational and unreasonable as the State Authority could have leased the scheduled land from the applicant H instead of compulsorily acquiring it. The trial judge, in allowing the applicant's application for judicial review, rejected the first ground but found favour with the other grounds canvassed by the applicant. Hence, the appeal herein by the appellants ('the respondents'). The respondents submitted that the acquisition was done in accordance with the LAA 1960 and was not I dependent on the zoning of the scheduled land and the EQA 1974. In respect

of s. 57 of the LAA 1960, the respondents submitted that it was within the discretion of the State Authority to lease instead of to compulsorily acquire the scheduled land.

Held (allowing appeal with no order as to costs)
Per Tengku Maimun Tuan Mat JCA delivering the judgment of the court:

(1) There was no breach as regards the zoning and requirements under the EQA 1974. The scheduled land was zoned partly as infrastructure and utilities and partly as agriculture. Although the landfill would fall under the industrial zone, there was no illegality in the decision-making by the respondents to acquire the scheduled land for purposes of expanding the landfill which was already in existence, which purpose was in accordance with the Rancangan Tempatan Majlis Daerah Kuala Selangor 2025. Therefore, there was no 'penyalahgunaan' in the acquisition of the scheduled land. (paras 25 & 27)

(2) The requirements under the EQA 1974 would be relevant at the implementation stage whereas the decision to acquire and the acquisition itself is a policy matter. There was nothing in the LAA 1960 that requires compliance with other laws before the acquisition of the land could be validly done. The challenge to the acquisition of the scheduled land on ground of illegality or contrary to law should be confined to the law as provided under the LAA 1960. In the instant appeal, except for the ground that the respondents failed to issue Form A, no other ground as regards the LAA 1960 itself was raised by the applicant. In the circumstances, the trial judge erred in holding that the acquisition of the land was invalid. (paras 28, 29, 31, 32 & 33)

(3) Section 57 of the LAA 1960 merely provides a discretion or an option to the State Authority to occupy or use the land without resort to compulsory acquisition. As the discretion or the option lies with the State Authority, its failure to invoke that provision in respect of the scheduled land could not be a ground to quash the acquisition. In any event, s. 57 would be applicable for occupation or usage of the land not exceeding three years, whereas, in the appeal herein, the landfill would operate between nine to ten years. (para 36)

(4) Considering the purpose of the acquisition, it could not be said that the respondents' decision to acquire the scheduled land was so outrageous in its defiance of logic or of accepted moral standards. Hence, the decision-making for the acquisition of the scheduled land did not suffer from illegality, irrationality or procedural impropriety which warranted judicial review. (paras 37 & 38)

Bahasa Malaysia *Headnotes*

Responden ('pemohon') adalah pemilik berdaftar tanah ('tanah berjadual') yang dipegang bawah hak milik pertanian tetapi dizonkan sebahagiannya sebagai infrastruktur dan utiliti dan sebahagian lagi sebagai pertanian. Berikutan 'Rancangan Tempatan Majlis Daerah Kuala Selangor 2025' sebahagian tanah berjadual dan tanah bersebelahan tanah pemohon akan dizonkan untuk kegunaan tanah perindustrian. Pada 2006, sebahagian tanah berjadual itu dan tanah bersebelahan tanah pemohon diambil secara wajib bagi tujuan pembinaan tanah isian sanitari. Tawaran pampasan dibuat dan diterima oleh pemohon. Melalui notis warta bertarikh 3 Mac 2015 dan diterbitkan pada 12 Mac 2015 bawah s. 8 Akta Pengambilan Tanah 1960 ('Akta'), Pihak Berkuasa Negeri memutuskan bawah s. 3(1)(a) Akta untuk mengambil tanah perayu bagi tujuan umum, khususnya bagi meluaskan tanah isian. Pemohon membantah pengambilan tersebut dan memfailkan permohonan semakan kehakiman, antara lain, atas alasan bahawa (i) kegagalan Pihak Berkuasa Negeri mengeluarkan Borang A mencabul keperluan statutori s. 4 Akta; (ii) tujuan tanah tersebut diambil melanggar pengezonan yang ditetapkan bagi tanah berjadual tersebut; (iii) tujuan pengambilan melanggar keperluan bawah Akta Kualiti Alam Sekeliling 1974 ('AKAS 1974'); dan (iv) keputusan pengambilan tanah untuk tujuan isian tanah bagi tempoh 10-15 tahun tidak rasional dan tidak munasabah kerana Pihak Berkuasa Negeri boleh memajak tanah berjadual itu daripada pemohon dan bukan mengambilnya secara wajib. Hakim bicara yang membenarkan permohonan semakan kehakiman pemohon, menolak alasan pertama tetapi bersetuju dengan alasan-alasan lain yang dikemukakan pemohon. Oleh itu, rayuan ini oleh perayu-perayu ('responden-responden'). Responden-responden menghujahkan bahawa pengambilan tersebut dilakukan sejajar dengan Akta dan tidak bersandar pada pengezonan tanah berjadual dan AKAS 1974. Berkaitan dengan s. 57 Akta, responden-responden menghujahkan bahawa budi bicara terletak pada Pihak Berkuasa Negeri sama ada hendak memajak dan bukan mengambil tanah berjadual tersebut secara wajib.

Diputuskan (membenarkan rayuan tanpa perintah bagi kos)
Oleh Tengku Maimun Tuan Mat HMR menyampaikan penghakiman mahkamah:

(1) Tiada pelanggaran berkaitan pengezonan dan keperluan bawah AKAS 1974. Tanah berjadual itu dizonkan sebahagiannya sebagai infrastruktur dan utiliti dan sebahagian lagi sebagai pertanian. Walaupun tanah isian terangkum bawah zon perindustrian, tiada ketaksahan dalam keputusan yang dibuat oleh responden-responden untuk mengambil tanah berjadual tersebut bagi tujuan meluaskan tanah isian sedia ada, yang tujuannya adalah sejajar menurut Rancangan Tempatan Majlis Daerah Kuala Selangor 2025. Oleh itu, tiada penyalahgunaan dalam pengambilan tanah berjadual tersebut.

(2) Keperluan bawah AKAS 1974 hanya relevan pada peringkat pelaksanaan manakala keputusan pengambilan dan pengambilan itu sendiri adalah hal perkara polisi. Tiada apa-apa dalam Akta yang memerlukan pematuhan undang-undang lain sebelum pengambilan tanah dibuat secara sah. Cabaran terhadap pengambilan tanah berjadual atas alasan ketaksahan atau pelanggaran undang-undang wajar dilingkungi pada undang-undang seperti yang diperuntukkan bawah Akta. Dalam rayuan ini, kecuali alasan bahawa responden-responden gagal mengeluarkan Borang A, tiada alasan lain berkaitan Akta sendiri dibangkitkan oleh pemohon. Dalam hal keadaan itu, hakim bicara terkhilaf apabila memutuskan bahawa pengambilan tanah tidak sah.

(3) Seksyen 57 Akta hanya memperuntukkan budi bicara atau pilihan buat Pihak Berkuasa Negeri untuk menduduki atau menggunakan tanah tanpa memilih pengambilan wajib. Oleh sebab budi bicara atau pilihan terletak pada Pihak Berkuasa Negeri, kegagalannya membangkitkan peruntukan tersebut bagi tanah berjadual tidak boleh dijadikan alasan untuk membatalkan pengambilan. Walau apapun, s. 57 akan terpakai bagi pendudukan atau penggunaan tanah tidak melampaui tiga tahun, manakala, dalam rayuan ini, tanah isian akan beroperasi antara sembilan hingga sepuluh tahun.

(4) Mempertimbangkan tujuan pengambilan tersebut, tidak boleh dikatakan bahawa keputusan pengambilan tanah oleh responden-responden amat melampau sehingga mengingkari kemunasabahan atau standard moral. Oleh itu, keputusan pengambilan tanah berjadual itu tidak mengalami ketaksahan, ketidakrasionalan atau kesalahan prosedur yang mewajarkan semakan kehakiman.

Case(s) referred to:

Ahmad Saman v. Kerajaan Negeri Kedah [2004] 1 CLJ 211 CA ***(refd)***

Council of Service Unions & Ors v. Minister for Civil Service [1985] 1 AC 374 ***(refd)***

Ee Chong Pang & Ors v. The Land Administrator Of The District Of Alor Gajah & Anor [2013] 3 CLJ 649 CA ***(refd)***

Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang v. Ong Gaik Kee [1983] 1 LNS 14 FC ***(refd)***

Pentadbir Tanah Alor Gajah & Anor v. Ee Chong Pang & Ors (No. 01-13-06-2012(M) (Unreported) ***(refd)***

Legislation referred to:

Environmental Quality Act 1974, ss. 34A(2), 34B(1)

Land Acquisition Act 1960, ss. 3(1)(a), 4, 8, 57

For the appellants - Naziah Mokhtar; Assistant Legal Advisor, Selangor

For the respondent - Andrew Teh & Tan Chong Pei; M/s Wong Lu Peen & Tunku Alina

[Editor's note: For the High Court judgment, please see Kuala Lumpur Kepong Berhad lwn. Selangor State Government & Yang Lain [2016] 1 LNS 937 (overruled).]

Reported by S Barathi

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JUDGMENT

Tengku Maimun Tuan Mat JCA:

[1] This is an appeal by the State Government of Selangor and the Land Administrator of Daerah Kuala Selangor (the respondents in the court below) against the order of the High Court at Shah Alam in allowing Kuala Lumpur Kepong Berhad's (the applicant in the court below) application for judicial review.

[2] We heard the appeal and had unanimously allowed it. We now provide our reasons. For ease of reference, in this judgment, the parties will be referred to as they were in the High Court.

Background Facts

[3] The applicant was the registered proprietor of the land held under GRN 51664 Lot 1595, Mukim Jeram, Daerah Kuala Selangor (the scheduled land). The scheduled land is held under agricultural title but zoned partly as infrastructure and utilities and partly as agricultural. Pursuant to the Rancangan Tempatan Majlis Daerah Kuala Selangor 2025, part of the scheduled land and the applicant's adjoining land, Lot 1593 will be zoned for industrial land use.

[4] In 2006, part of the scheduled land and the applicant's adjoining land, namely Lots 2958 and 2959 were compulsorily acquired for purposes of constructing a sanitary landfill. Offer for compensations were made and accepted by the applicant.

[5] *Vid*e Gazette No. 935 dated 3.3.2015 and published on 12 March 2015 under s. 8 of the Land Acquisition Act 1960 (the LAA 1960), the State Authority decided under s. 3(1)(a) of the LAA 1960 to acquire the applicant's land for public purpose *viz*:

> permohonan pengambilan tanah di bawah seksyen 3(1)(a) dan pengisytiharan di bawah seksyen 8 Akta Pengambilan Tanah 1960 bagi tujuan Tapak Pelupusan Sampah di atas sebahagian Hakmilik GRN 51664 Lot 1595, Mukim Jeram, Daerah Kuala Selangor

[6] The purpose, in particular was to expand the landfill mentioned in para. (4) above.

Proceedings In The High Court

[7] The applicant objected to the acquisition and filed an application for judicial review on the following grounds:

(i) that the State Authority's failure to issue form A violates the statutory requirement of s. 4 of the LAA 1960;

(ii) that the purpose for which the scheduled land was acquired contravenes the designated zoning of the scheduled land;

(iii) that the purpose of the acquisition contravenes the requirements under the Environmental Quality Act 1974 (EQA 1974); and

(iv) that the decision to acquire the land for purposes of a landfill for a period of 10-15 years, was irrational and unreasonable as the State Authority could have leased the scheduled land from the applicant instead of compulsorily acquiring it.

[8] The learned judge rejected the first ground but found favour with the other grounds canvassed by learned counsel for the applicant.

[9] In respect of zoning, the learned judge accepted the following submission of learned counsel:

(i) that the scheduled land is held under an agricultural title but zoned for infrastructures and utilities use;

(ii) that under the regulations issued by the first respondent, any land being used as a waste disposal site or landfill must be zoned for "heavy industry";

(iii) that when the decision was made to compulsorily acquired the applicant's land, it could not have been used as a landfill simply because the usage of the land as a landfill would have breached the zoning regulations imposed by the first respondent;

(iv) that the gazetted purpose of the acquisition, namely the landfill would have been, at the date of the gazette, an act that went against the law; and

(v) that the court cannot condone the actions of the State Authority that breaches the zoning regulations that they themselves had set.

[10] The learned judge also agreed with learned counsel for the applicant on the issue of non-compliance with EQA 1974 wherein learned counsel contended that the management of waste disposal is a "prescribed activity" that is regulated by statute and that the use and operation of land, management, site location for waste disposal are administered and controlled by the Town and Country Planning Act 1976 and the EQA 1974.

[11] Learned counsel further submitted that a person who wishes to carry out the management of a waste disposal site must have licenses, approval and/or permits from the relevant authority to do so which includes:

(i) the environmental impact assessment reports;

(ii) the evaluation of site fitness;

(iii) the written approval for the construction of waste disposal site; and

(iv) the issuance of licence for the use of waste disposal site.

[12] Learned counsel contended that during the decision-making process for the acquisition, the State Authority failed to consider that the usage of the land would be in breach of the law as the necessary reports and studies have not been completed yet. In this regard, learned counsel highlighted the following chronology of events:

23 October 2014	Selangor State Executive Council's decision on land acquisition
20 April 2015	Department of environment confirmed the terms of reference needed to be studied by project mover in the environmental impact assessment reports
18 November 2015	At the date of the affidavit in reply of the second respondent, it was stated that there is a study being conducted, which means the study and valuation that are needed have not been completed yet

[13] As for s. 57 of the LAA 1960, the following submission of learned counsel for the applicant was accepted by the learned judge:

(i) a compulsory acquisition through the LAA 1960 resulted in the permanent loss of the applicant's ownership of the land;

(ii) the applicant has a legitimate expectation that the State Authority would undertake its responsibilities and obligations in respect of the land acquisition with care, caution and proper sense of responsibility;

(iii) the applicant was informed that the acquired land will operate as a landfill for a period of seven years and thereafter, the landfill operator will close the site and convert it into a park; and

(iv) the consultants engaged by the first respondent confirmed that the acquired land will be used as a landfill for nine to ten years after 2017.

[14] The applicant further contended that due to the relatively short period of time to fulfil the use of the land, the State Authority ought to consider s. 57 where pursuant thereto, the State Authority can instruct the Land Administrator to procure the occupation or use of the land for nine years or more. This alternative option would benefit the applicant as it will not lose its ownership of the land.

[15] The learned trial judge agreed with learned counsel that if the first respondent had intended to use the land as a landfill, they could have leased the land for a short term ie, for 10-15 years under s. 57 of the LAA 1960 without compulsorily acquiring the land.

[16] The applicant's application for judicial review was thus allowed, hence the appeal by the respondents.

The Appeal

[17] Before us, learned Assistant State Legal Adviser (ALA) for the respondents argued that the learned judge erred in allowing the application for judicial review. Although 12 errors of law and fact were listed in the memorandum of appeal, we found that central to the complaint was that there was no basis for the learned trial judge to allow the judicial review.

[18] Learned ALA submitted that the acquisition was done in accordance with the LAA 1960 and that the acquisition was not dependent on the zoning of the scheduled land and the EQA 1974. What needs to be adhered to, according to learned ALA, was the LAA 1960 and in this respect relied on the cases of *Ahmad Saman v. Kerajaan Negeri Kedah* [2004] 1 CLJ 211 and *Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang v. Ong Gaik Kee* [1983] 1 LNS 14; [1983] 2 MLJ 35. Learned ALA further submitted that in any event, those two matters concerning zoning and environmental quality had been complied with.

[19] In respect of s. 57 of the Act, learned ALA submitted that it was within the discretion of the State Authority to lease instead of to compulsorily acquire the scheduled land. This ground, contended learned ALA, cannot form the basis to quash the acquisition of the land.

[20] In resisting the appeal, learned counsel for the applicant reiterated his position in the court below. Based on the grounds submitted in the High Court, learned counsel contended that the land acquisition and the decision-making of the acquisition were tainted with impropriety, illegality and irrationality, which rendered the acquisition of the land invalid. The learned High Court Judge was thus correct in allowing the applicant's judicial review and in quashing the acquisition.

Our Findings

The Zoning Regulations/The EQA 1974

[21] We will take the first and the second issues together ie, whether the purpose of acquisition contravenes the zoning and the EQA 1974, but before we move on to consider them, it is perhaps useful at this juncture to set out the oft-quoted authority on judicial review as set out in the case of *Council of Service Unions & Ors v. Minister for Civil Service* [1985] 1 AC 374 where at pp. 410 and 411 Lord Diplock said:

> Judicial review has I think developed to a stage when without any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call "illegality", the second "irrationality" and the third "procedural impropriety".

A By "illegality" as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of dispute, those persons, the Judges, by whom the judicial power of the state is exercisable.

B By "irrationality" I mean what can by now be succinctly referred to as "*Wednesbury* unreasonableness (*Associated Provincial Pictures Houses Ltd v. Wednesbury Corporation* [1948] 1 KB 223). It applies to a decision so outrageous in its defiance of logic or of accepted moral standards that no sensible person who has applied his mind to the question to be decided C could have arrived at it.

I have described the third head as "procedural impropriety" rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head D covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred even where such failure does not involve any denial of natural justice.

[22] Coming back to the issues, to appreciate His Lordship's reasoning, we E reproduce the relevant paragraph in his grounds of judgment in respect of zoning where he stated:

24. Berdasarkan affidavit-affidavit yang difailkan, saya mendapati zoning tanah tersebut adalah zoning utiliti dan pertanian semasa pengambilan. Manakala tujuan pengambilan tanah terjadual adalah untuk pembesaran tempat pembuangan sampah. Pada tarikh warta dikeluarkan, saya F bersetuju dengan pendapat Peguamcara Pemohon bahawa tanah terjadual tidak boleh digunakan sebagai tapak pelupusan sampah kerana zoningnya belum ditukar kepada zoning infrastruktur dan utiliti. Jika tanah terjadual digunakan sebagai tapak pelupusan, ianya akan melanggar zoning yang telah ditetapkan oleh Responden Pertama.

G 25. Saya memutuskan kegagalan Responden-Responden menukar zoning tersebut untuk membolehkan tanah terjadual digunakan sebagai tapak pelupusan sampah, jelas berlakunya penyalahgunaan dalam pengambilan tanah terjadual.

[23] Insofar as the EQA 1974 is concerned, His Lordship relied on H ss. 34A(2) and 34B(1) of the Act which respectively provide:

Report on impact on environment resulting from prescribed activities

34A. (1) ...

(2) Any person intending to carry out any of the prescribed I activities shall, before any approval for the carrying out of such activity is granted by the relevant approving authority, submit a report to the Director General. The report shall be in accordance with the guidelines prescribed by the Director General and shall

> contain an assessment of the impact such activity will have or is likely to have on the environment and the proposed measures that shall be undertaken to prevent, reduce or control the adverse impact on the environment.
>
> Prohibition against placing, deposit, etc., of scheduled wastes
>
> 34B. (1) No person shall:
>
> (a) place, deposit or dispose of, or cause or permit to place, deposit or dispose of, except at prescribed premises only, any scheduled wastes on land or into Malaysian waters;
>
> (b) receives or send, or cause or permit to be received or sent any scheduled wastes in or out of Malaysia; or
>
> (c) transit or cause or permit the transit of the scheduled wastes,
>
> without any prior written approval of the Director General.

[24] Having considered the above provisions, the learned trial judge concluded as follows:

> [28] Saya mendapati berdasarkan peruntukan undang-undang di atas, jika tanah terjadual akan digunakan sebagai tapak pelupusan sampah, ianya mesti mendapat kelulusan atau kebenaran daripada Ketua Pengarah Jabatan Alam Sekitar. Apa yang berlaku dalam kes ini bahawa kajian dan laporan masih berjalan dan kelulusan oleh Ketua Pengarah Jabatan Alam Sekitar belum diperolehi oleh pihak Responden Pertama untuk menggunakan tanah terjadual sebagai tapak pelupusan sampah. Rujuk eksibit DLAR-7 di perenggan 6 dimana Pengarah Jabatan Alam Sekitar telah menyatakan:
>
> > Sukacita dimaklumkan juga cadangan pembinaan tapak pelupusan sanitari adalah merupakan aktiviti yang memerlukan penyediaan Laporan EIA iaitu Environment Impact Assessment dan kelulusan daripada Jabatan Alam Sekitar dibawah Aktiviti 18b(iv) Perintah Kualiti Alam Sekeliling (Aktiviti Yang Ditetapkan) dan (Penilaian Kesan Kepada Alam Sekeliling) 1987 dimana Laporan Penilaian Kesan Kepada Alam Sekeliling Terperinci iaitu (Laporan Detailed EIA atau DEIA) perlu disediakan dan dikemukakan ke Jabatan Alam Sekitar Ibu Pejabat Putrajaya untuk tujuan penilaian dan pertimbangan selanjutnya selaras dengan keperluan Seksyen 34A (Akta Kualiti Alam Sekeliling 1974, dengan mengambilkira keperluan audit dan langkah kawalan yang sewajarnya terhadap cadangan pembangunan di atas.
>
> [29] ... jikapun pihak Responden Pertama ingin mengambil tanah terjadul, ianya patut diwartakan selepas semua keperluan dibawah Undang-Undang Alam Sekitar telahpun dipatuhi.

[25] We found much force in the submission of learned ALA that there was no breach as regards the zoning and requirements under the EQA 1974. The affidavit in reply of the second respondent states as follows (rekod rayuan (B): pp. 82, 84-85):

A 10. ... tapak ini telah dizonkan, sebagai kawasan industri yang boleh digunakan sebagai kawasan infrastruktur (pelupusan sisa pepejal bagi tujuan pelupusan sisa sedia ada dan pembesarannya sahaja) yang telah diluluskan oleh Jawatankuasa Perancang Negeri di bawah Seksyen 4 Akta Perancang Bandar dan Desa 1976.

B 11. ... melalui sepucuk surat dari Majlis Daerah Kuala Selangor ("MDKS") bertarikh 9hb April 2015 dialamatkan kepada Pejabat Daerah/Tanah Kuala Selangor, Responden Kedua telah menerima maklumat perancangan permohonan pengambilan tanah di bawah Seksyen 3(1)(a) dan Pengisytiharan di bawah Seksyen 8 Akta Pengambilan Tanah 1960 bagi tujuan tapak pelupusan sampah di atas sebahagian hak milik GRN C 51664, Lot 1595, Mukim Jeram, Daerah Kuala Selangor. (selepas ini dirujuk sebagai "pengambilan tanah tersebut"). Laporan MDKS tersebut menyebut bahawa kegunaan tanah bagi Lot tanah yang terlibat dalam pengambilan tanah tersebut adalah dizonkan sebagai kawasan tapak pelupusan sampah.

D ...

20. ... permohonan pengambilan tanah ini yang bertujuan untuk tapak pelupusan sampah telah mengambil kira dan mematuhi semua prosedur dan garis panduan berkenaan kawasan yang telah dizonkan untuk tujuan pengambilan tanah tersebut. Rancangan Tempatan Majlis Daerah Kuala Selangor 2025 telah menyatakan dengan jelas bahawa tapak ini telah E dizonkan sebagai kawasan industri yang boleh digunakan sebagai kawasan infrastruktur (pelupusan sisa pepejal bagi tujuan pelupusan sisa sedia ada dan pembesarannya sahaja).

[26] Indeed the Rancangan Tempatan Majlis Daerah Kuala Selangor 2025 (Rekod Rayuan Bahagian C/Jilid 1: pg 254) states:

F G. Guna Tanah Infrastruktur dan Utiliti

Guna tanah infrastruktur dan utiliti juga meningkat sebanyak 11%, iaitu daripada hanya 1,078.84 hektar pada tahun 2013 kepada 1,212.11 hektar pada tahun 2025. Cadangan utama infrastruktur dan utiliti ini adalah lebih menjurus kepada pembesaran tapak pelupusan sampah sediada yang G dicadangkan di Jeram.

[27] The scheduled land, as mentioned earlier, is zoned partly as infrastructure and utilities and partly as agriculture. Although the landfill would fall under the industrial zone, we found no illegality in the decision-making by the respondents to acquire the scheduled land for purposes of H expanding the landfill which was already in existence, which purpose was in accordance with the Rancangan Tempatan Majlis Daerah Kuala Selangor 2025. We therefore disagreed with the learned judge that there was "penyalahgunaan" in the acquisition of the scheduled land.

I

[28] As for the requirements under the EQA 1974, we agreed with learned ALA that the requirements would be relevant at the implementation stage whereas the decision to acquire and the acquisition itself is a policy matter. For convenience, we reproduce the argument of learned ALA as follows:

> Adalah dihujahkan, proses pematuhan JAS dan DEIA adalah proses yang berterusan. Begitu juga dengan pematuhan kategori kegunaan tanah. Ia tidak relevan setakat keputusan dibuat untuk pengambilan tanah kerana ia pengambilan tanah adalah bersifat polisi, manakala pematuhan JAS dan DEIA dan kategori kegunaan tanah adalah bersifat pelaksanaan. Pematuhan hanya relevan setelah tanah diambil dan pelaksanaan hendak dijalankan. Contoh atau analogi yang mudah ialah: PBN meluluskan pengambilan tanah untuk membina sekolah. Sama ada rekabentuk sekolah mematuhi piawaian JKR, sesuai atau selamat adalah isu pelaksanaan. Ianya tidak menjadikan pengambilan tidak sah semata-mata disebabkan rekabentuk sekolah yang akan dibina tidak mematuhi piawaian JKR.

[29] More importantly, as highlighted by learned ALA, there is nothing in the LAA 1960 that requires compliance with other laws before the acquisition of the land can be validly done. In *Ahmad Saman* (*supra*), Arifin Zakaria JCA (as he then was) said at p. 215:

> Thus, it would appear that the acquisition may be challenged on any of the following grounds:
>
> (a) that the acquiring authority has misconstrued its statutory powers;
>
> (b) that the purpose stated in the Declaration does not come within s. 3;
>
> (c) where it can be shown that the acquiring authority has acted in bad faith; or
>
> (d) where the acquiring authority has acted contrary to the law.

[30] His Lordship Arifin Zakaria made reference to *Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang (supra*), where Salleh Abas CJ (Malaya) (as he then was) said at p. 37:

> We think it is sufficient to decide this appeal on the basis of a simpler question, i.e. whether or not in view of the long delay resulting in an injustice to the land owner the acquisition was done in accordance with the law (the Land Acquisition Act). Only in the circumstances that it is not done in accordance with the Act can we say that the acquisition is contrary to the requirement of clause (1) of Article 13 of the Federal Constitution which requires that to be lawful every deprivation of property must be done in accordance with law.

[31] Guided by the above authorities, we accepted learned ALA's submission that the challenge to the acquisition of the scheduled land on ground of illegality or 'contrary to law' should be confined to the law as provided under the LAA 1960.

[32] In the instant appeal, except for the ground that the respondents failed to issue form A, (which ground the learned judge rejected premised on the decision of the Federal Court in *Pentadbir Tanah Alor Gajah & Anor v Ee Chong Pang & Ors* (No. 01-13-06-2012(M)), which overruled the decision of this Court in *Ee Chong Pang & Ors v. The Land Administrator Of The District Of Alor Gajah & Anor* [2013] 3 CLJ 649), the applicant raised no other ground as regards the LAA 1960 itself.

[33] In the circumstances, we found that the learned judge erred in holding that the acquisition of the land was invalid.

Section 57 Of The LAA 1960

[34] Section 57 reads:

> 57. Temporary occupation or use of the land.
>
> Whenever it appears to the State Authority that the temporary occupation and use of any land is needed:
>
> (a) for any purpose specified in section 3; or
>
> (b) in order to carry out public works on any land,
>
> the State Authority may direct the Land Administrator to procure the occupation or use of any such land for such term as he shall think fit, not exceeding three years from the date of commencement of such occupation or use, in the manner prescribed by this Part.

[35] In respect of the above provision, the learned judge held (RRT: p. 26):

> 35. Saya mendapati keterangan yang dikemukakan oleh pihak Responden sendiri menunjukkan bahawa tujuan yang diwartakan bagi tanah terjadual hanyalah untuk tempoh yang agak pendek, lebih kurang 10 tahun. Saya menerima hujahan Peguam Pemohon sekiranya Responden Pertama ingin menggunakan tanah terjadual tersebut sebagai landfill, Responden Pertama bolehlah menyewa tanah terjadual daripada Pemohon untuk tempoh jangkamasa pendek iaitu 10 atau 15 tahun dan bukannya mengambil balik untuk selama-lamanya. Atas alasan itu, saya mendapati hujahan Penolong Penasihat Undang-Undang yang menghujahkan walaupun tapak pelupusan tersebut digunakan untuk tempoh 7 atau 10 tahun, ianya bukan bermaksud tapak tersebut akan digunakan secara sementara, adalah tidak bermerit.

[36] With respect, we were of the view that s. 57 merely provides a discretion or an option to the State Authority to occupy or use the land without resort to compulsory acquisition. As the discretion or the option lies with the State Authority, its failure to invoke that provision in respect of the scheduled land cannot be a ground to quash the acquisition. In any event, s. 57 would be applicable for occupation or usage of the land not exceeding three years, whereas in the instant appeal the landfill will operate between 9-10 years.

[37] Further, considering the purpose of the acquisition, it cannot be said that the respondents' decision to acquire the scheduled land was so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided, could have arrived at it. Consequently, we found that the decision to acquire the scheduled land did not suffer from irrationality.

Conclusion

[38] In the light of all the above, it was our judgment that the decision-making for the acquisition of the scheduled land did not suffer from illegality, irrationality or procedural impropriety which warrants judicial review by the learned High Court Judge. We therefore allowed the appeal with no order as to costs.